THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29015 OF 1997

Date: 08.03.2007

Between:

No. 14527426K Hav Sulochanan Nair.

... Petitioner.

And

1. Union of India, rep., by its Secretary for Defence, South Block, New Delhi and five others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 29015 OF 1997

ORDER:

Questioning the action of the respondents in rejecting his claim for promotion to the post of Naib Subedar in proceedings dated 24.09.1997, as illegal and contrary to the promotion criteria laid down in proceedings dated 18.01.1993, the present writ petition is filed.

In the proceedings dated 24.09.1997 the petitioner was informed that his statutory complaint dated 22.04.1997 had been examined and it was observed that there was no merit in the redress sought for by him.

Facts, in brief, are that for promotion as Naib Subedar in the Army, eligible Havaldars were required to undergo a cadre course (Battle Physical Efficiency Test). While the petitioner underwent the course, scheduled during December 1995 to March 1996, for five weeks, his illness resulted in his not being able to undergo the BPET resulting in his being disqualified from the course on 17.01.1996 and being sent back to his unit.

The petitioner again underwent the course during the period 08.07.1996 to 19.10.1996 and qualified in the course on 19.10.1996. Even before the petitioner had subsequently attended the course during the period 08.07.1996 to 19.10.1996, selections were held in June 1996 for promotion to the post of Naib Subedar and since the petitioner had not completed the cadre course by then, his case was not considered for promotion and his juniors,

who had completed the cadre course, were promoted to the post of Naib Subedar. After the petitioner passed the cadre course on 19.10.1996, the next selection held for promotion to the post of Naib Subedar was on 01.03.1997 and to the petitioner's misfortune, there was only one vacancy and since his seniors had, by then, also completed the cadre course one among his seniors were promoted as Naib Subedar and not the petitioner herein.

The contention of Sri S. Krishna, learned Counsel for the petitioner, is twofold. Firstly that the criteria for promotion, prescribed in the circular dated 12.04.1993, does not mandate completion of the cadre course for being considered for promotion to the post of Naib Subedar and secondly that, even if the cadre course is considered as a prerequisite for being promoted, eligible Hawaldars could have been considered for promotion to the post of Naib Subedar in their order of seniority and, if found eligible, promoted to the said post subject to the condition that they undergo and complete the cadre course before they are given posting in the promoted post.

Sri K.G. Krishnamurthy, learned Central Government Standing Counsel, would however place reliance on Army Order 45 of 1980 whereunder it is stipulated that, to ensure uniformity in the standards of basic military and technical knowledge amongst the N.C.Os and J.C.Os of the Army, they are required to qualify at the appropriate cadre course before promotion to the rank of Hawaldars or equivalent and Naib Subedar/Naib Rasaldar. Under Army Order 45 of 1980, qualifying in the cadre course is a prerequisite for promotion to the rank of Naib Subedar. While it is

true that the promotion criteria prescribed in circular dated 12.04.1993 does not specifically require completion of the cadre course for promotion as Naib Subedar, it is not even the case of the petitioner that Army Order 45 of 1980 is not applicable nor is there any challenge to the validity of Army Order 45 of 1980 in the present writ petition. It must, therefore, be held that the criteria prescribed both in the circular dated 12.04.1993 and in Army Order 45 of 1980 require compliance.

As noted above, Army Order 45 of 1980 requires a non-commissioned Officer in the rank of Hawaldar to qualify in the appropriate cadre course before he is promoted to the Junior Commissioned Officer's post of a Naib Subedar. In this case the petitioner did not qualify in the course, though he participated in the course which was scheduled during the period December, 1995 to March 1996, and was, in fact, disqualified and sent back to his unit on 17.01.1996. When selections were held in June 1996 for promotion to the post of Naib Subedar, the petitioner had not qualified in the cadre course. It was only after selections were held and his juniors promoted that he subsequently completed the course on 19.10.1996. The petitioner's case was considered in the subsequent selections held on 01.03.1997 but to his misfortune his seniors had also passed the cadre course by then and, as there was only one vacancy, one amongst his seniors was promoted and not the petitioner.

The contention of Sri S. Krishna, learned Counsel for the petitioner that candidates should be considered for promotion and not disqualified for not completing the cadre course and that, even

if they are promoted, the promotion order should not be given effect to till they complete the cadre course, cannot be accepted. The Army Order 45 of 1980 is clear and specific. It provides that a non-commissioned officer is required to qualify in the appropriate cadre course "**before promotion"** to the rank of Naib Subedar, a post in the Junior Commissioned Officer cadre. The requirement of passing the appropriate cadre course is before promotion and not subsequent thereto. The construction sought to be placed in this regard by Sri S. Krishna, learned Counsel for the petitioner, would necessitate words being supplied to Army Order 45 of 1980, which is not, ordinarily, for Courts to resort to. The action of the respondents in not promoting the petitioner from the rank of Hawaldar to that of Naib Subedar in June 1996 or 01.03.1997 cannot be faulted. The writ petition fails and is accordingly dismissed. No costs.

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Date: 08.03.2007 RAMESH RANGANATHAN, J

MRKR